



## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-068]

### **Forged Steel Fittings from the People's Republic of China: Notice of Court Decision Not in Harmony with the Results of Countervailing Duty Administrative Review; Notice of Amended Final Results**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** On September 13, 2022, the U.S. Court of International Trade (CIT) issued its final judgment in *Bothwell (Taizhou) Steel Fittings, Co., Ltd. v. United States*, Consol. Court no. 21-00166, sustaining the U.S. Department of Commerce's (Commerce) remand results pertaining to the administrative review of the countervailing duty (CVD) order on forged steel fittings (FSF) from the People's Republic of China (China) covering the period March 14, 2018, through December 31, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the countervailable subsidy rate assigned to Both-Well (Taizhou) Steel Fittings, Co., Ltd. (Both-Well).

**DATES:** Applicable September 23, 2022.

**FOR FURTHER INFORMATION CONTACT:** William Horn and Zachariah Hall, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4868 or (202) 482-6261, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On March 18, 2021, Commerce published its *Final Results* in the 2018 CVD administrative review of FSF from China.<sup>1</sup> In the *Final Results*, Commerce determined that the use of adverse facts available (AFA) under sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), was warranted in determining the countervailability of the Export Buyer's Credit (EBC) program, because the Government of China (GOC) had failed to provide the necessary information Commerce required to analyze the program.<sup>2</sup> Commerce also determined that it could not rely on statements of non-use provided by Both-Well and its customers because of the GOC's failure to provide the necessary information with respect to the operation of the program.<sup>3</sup> Consistent with Commerce's CVD AFA hierarchy, Commerce selected the highest calculated rate for the same or similar program as the AFA rate for this program, 10.54 percent, in accordance with section 776(d) of the Act and Commerce's established practice.<sup>4</sup> Commerce calculated a total net subsidy rate of 25.90 percent for Both-Well.<sup>5</sup>

Both-Well appealed Commerce's *Final Results*. On February 8, 2022, the CIT remanded the *Final Results* to Commerce and ordered either: (1) that Commerce must attempt to verify the EBC program non-use certifications provided by Both-Well's U.S. customers or; (2) that if, after attempting verification, Commerce determines verification is not possible without the missing information from the GOC, then Commerce must explain, in detail, the specific ways in which Commerce attempted verification of the non-use certifications.<sup>6</sup>

In its final remand redetermination, issued in July 2022, Commerce found, after issuing supplemental questionnaires to Both-Well, that there was no use of the EBC program with

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<sup>1</sup> See *Forged Steel Fittings from the People's Republic of China: Final Results of Countervailing Duty Administrative Review*; 2018, 86 FR 14722 (March 18, 2021) (*Final Results*), and accompanying Issues and Decisions Memorandum.

<sup>2</sup> *Id.* at Comment 1.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at Comment 2.

<sup>5</sup> See *Final Results*, 86 FR at 14723.

<sup>6</sup> See *Bothwell (Taizhou) Steel Fittings, Co., Ltd. v. United States*, Consol. Court No. 21-00166 (CIT February 8, 2022), at 20-21.

respect to Both-Well in this review and removed the subsidy rate for the EBC program from Both-Well's final CVD subsidy rate, resulting in a 15.36 percent rate for Both-Well.<sup>7</sup> On September 13, 2022, the CIT sustained Commerce's final redetermination.<sup>8</sup>

#### Timken Notice

In its decision in *Timken*,<sup>9</sup> as clarified by *Diamond Sawblades*,<sup>10</sup> the U.S. Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Act, Commerce must publish a notice of court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT's September 13, 2022, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

#### Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to Both-Well as follows:

Exporter	Subsidy Rate (percent <i>ad valorem</i> )
Both-Well (Taizhou) Steel Fittings, Co., Ltd.	15.36

#### Cash Deposit Requirements

Because Both-Well has a superseding cash deposit rate, *i.e.*, there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate.

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<sup>7</sup> See *Final Results of Remand Redetermination Pursuant to Court Remand, Bothwell (Taizhou) Steel Fittings, Co., Ltd. v. United States*, Consol. Court No. 21-00166, dated July 7, 2022, available at <https://access.trade.gov/resources/remands/22-10.pdf>, at 7-8.

<sup>8</sup> See *Both-Well (Taizhou) Steel Fittings, Co., Ltd., v. United States*, Court No. 21-00166, Slip Op. 22-105 (CIT September 13, 2022).

<sup>9</sup> See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

<sup>10</sup> See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

### Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that were produced and/or exported by Both-Well, and were entered, or withdrawn from warehouse, for consumption during the period March 14, 2018, through December 31, 2018. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess countervailing duties on unliquidated entries of subject merchandise produced and/or exported by Both-Well in accordance with 19 CFR 351.212(b). We will instruct CBP to assess countervailing duties on all appropriate entries covered by this review when the *ad valorem* rate is not zero or *de minimis*. Where an *ad valorem* subsidy rate is zero or *de minimis*,<sup>11</sup> we will instruct CBP to liquidate the appropriate entries without regard to countervailing duties.

### Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: September 22, 2022.

Lisa W. Wang,  
Assistant Secretary

for Enforcement and Compliance.

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<sup>11</sup> See 19 CFR 351.106(c)(2).